

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Improving 9-1-1 Reliability	)	PS Docket No. 13-75
	)	
Reliability and Continuity of Communications	)	PS Docket No. 11-60
Networks, Including Broadband Technologies	)	
	)	

**REPLY COMMENTS OF AT&T INC.**

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**I. INTRODUCTION AND SUMMARY**

AT&T Inc., on behalf of itself and its affiliates (collectively “AT&T”), hereby submits reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking seeking comment on approaches to ensure the reliability and resiliency of the nation’s 9-1-1 system during times of major disaster.<sup>1</sup> The record gathered in this proceeding, like the extensive record gathered in the preparation of the *Derecho Report*, reflects that: (1) most 9-1-1 Service Providers performed well during the derecho despite the historic severity of the storm; (2) this success resulted from the widespread adherence by 9-1-1 Service Providers to voluntary industry best practices; and (3) industry-wide regulatory remedies are not needed. The record reflects that in those discrete instances where particular providers did not perform well, the Commission has investigated and addressed any issues on a provider-specific basis. Moreover, state and local officials—those most impacted by any performance issues and best-positioned to determine the fixes needed on a local-market basis—

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<sup>1</sup> *Improving 9-1-1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13-75, 11-60, Notice of Proposed Rulemaking, 28 FCC Rcd 3414 (2013) (“Notice”); *see also* FCC PUB. SAFETY & HOMELAND SEC. BUREAU, IMPACT OF THE JUNE 2012 DERECHO ON COMMUNICATIONS NETWORKS AND SERVICES: REPORT AND RECOMMENDATIONS (PSHSB, rel. Jan. 10, 2013), *available at* <http://www.fcc.gov/document/derecho-report-and-recommendations> (“*Derecho Report*”).

also have investigated and taken remedial measures. During this period, providers who did not experience problems as a result of the derecho have not been idle. Rather, AT&T and its peers have been active, both before and after the storm, in reviewing and improving their proprietary disaster response practices and in enhancing industry best practices. Accordingly, the Commission should continue to address network reliability and resiliency through best practices that enable providers to maintain flexibility and not through new, industry-wide rules.

The *Notice* afforded commenters favoring prescriptive regulation an opportunity to develop a factual record on why it is necessary or advisable for the Commission to abandon its successful reliance on dynamic best practices in favor of prescriptive regulations, and to demonstrate how new regulations will increase 9-1-1 reliability. But regulation proponents have failed on both counts. Commenters favoring prescriptive regulation largely assume a record of industry-wide failure that does not exist, either in the *Derecho Report* or elsewhere. With respect to proposed new 9-1-1 reliability requirements, these commenters largely take a “more is better” approach that ignores best practices already in place and glosses over the differences in provider networks and the markets in which they are deployed.

The record gathered in this proceeding reflects that voluntary best practices serve the public well. It also demonstrates that providers—with Commission support and involvement—continuously update and refine their proprietary disaster relief practices, as well as industry best practices, to reflect new learning and account for “lessons learned” from particular disasters. The Commission should not disrupt this dynamic and effective process by now embarking on a prescriptive regulatory approach.

## II. THE COMMISSION—AS WELL AS STATE AND LOCAL AUTHORITIES—ALREADY HAS INVESTIGATED AND ADDRESSED THE DISCRETE FAILINGS OF PARTICULAR PROVIDERS.

Neither the Commission, nor commenters, identified systemic flaws in 9-1-1 communications networks that warrant industry-wide regulatory remedies. By all accounts, the derecho that struck the Ohio Valley and Mid-Atlantic regions on June 29, 2012 was a devastating event. The fast-moving, violent storm crossed 700 miles, impacting 11 states and Washington, D.C. It left a path of destruction causing widespread damage to the electric and communications infrastructures, redefining what an “extraordinary event” is in some impacted areas.<sup>2</sup> Nevertheless, as in other areas of its policy-making, the Commission should base its 9-1-1 reliability regime on a reasonable assessment of risk rather than on an extraordinary event. This is especially so here, where the record demonstrates that most providers’ networks performed well during the derecho.<sup>3</sup> While some commenters assume a record of industry-wide failure,<sup>4</sup>

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<sup>2</sup> See USTelecom Comments at 2-3.

<sup>3</sup> See AT&T Comments at 10; United States Telecom Association (“USTelecom”) Comments at 3 (“[C]ommunication providers’ networks are resilient and reliable and generally performed well during and after the derecho.”); see also Alaska Communications Systems (“ACS”) Comments at 3 (“It is in every service provider’s interest to ensure that its 9-1-1 services are as resilient as possible, and that it implements industry best practices to the extent that its network capabilities make possible. As discussed above, Alaska regularly experiences storms with intensity equal to or greater than that of the June 2012 derecho, and ACS’s 9-1-1 services by and large remain fully operational.”); Western Telecommunications Alliance (“WTA”) Comments at ii (“WTA is unaware of any significant problems with 9-1-1 planning, system failures or similar matters involving large numbers of carriers in substantial portions of the United States. The June 2012 derecho was a unique and isolated event that does not require extensive and expensive nationwide 9-1-1 changes.”).

<sup>4</sup> For example, the Blooston Rural Carriers ask the Commission to focus new regulatory actions to “the carriers identified in the *Derecho Report* as having failures with respect to 9-1-1 service” (i.e., Verizon, Frontier, CenturyLink, AT&T and US Cellular). Blooston Rural Carrier Comments at 7. Blooston provides no basis for its assumption that AT&T experienced 9-1-1 service failures. To the extent Blooston is relying on the *Derecho Report*, that reliance is misplaced. As AT&T explained in its comments, the *Derecho Report* gives readers the false impression that AT&T Ohio lost Automatic Location Identification (“ALI”) capability for nearly four days. In reality, AT&T Ohio experienced limited, intermittent failures on ALI links over a

they offer no new facts to contradict the generally positive record of performance, with limited exceptions, contained in the *Derecho Report*. And where limited failures did occur, the FCC has investigated and made remedial, provider-specific recommendations that individual providers have gone to great lengths to implement.<sup>5</sup>

Moreover, state and local officials have also investigated and taken remedial measures. For example, the Virginia State Corporation Commission (“VSCC”)—the telecommunications regulator in the state most affected by the derecho—investigated the 9-1-1 outages in Virginia, issued findings about what caused the outages, and adopted Verizon-specific monitoring requirements to prevent future outages.<sup>6</sup> While VSCC urges the FCC to impose more broadly the type of remedies it imposed on Verizon in Virginia, the VSCC’s investigation, as detailed in

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four-day period during and after the storm, which AT&T Ohio addressed by rerouting traffic to alternative PSAPs. No PSAP in Ohio served by AT&T lost ALI capability for a period of four days.

<sup>5</sup> See, e.g., Frontier Comments at 2 (“Frontier’s experience from the derecho paid off nearly immediately as the parts of its network affected by Superstorm Sandy performed extremely well in a severe stress situation.”); *id.* at 3-4 (documenting Frontier’s compliance with multiple commitments it made to the FCC); USTelecom Comments at 3-4 (“In the eleven months since the 2012 derecho, these impacted communications providers have strengthened their 9-1-1 reliability and implemented a number of corrective actions based on their detailed post-storm analyses.”); *id.* at 4 (“[O]n August 12, 2012, Verizon released a report detailing its own post-storm analysis of the 9-1-1 service disruptions impacting Northern Virginia and identified important proactive improvements to minimize the risk of future problems.”); Verizon and Verizon Wireless (“Verizon”) Comments at 1 (“During the derecho, there were 911 impacts experienced in certain locations, and Verizon has openly acknowledged that it can and should provide better service. To that end, Verizon promptly investigated the root causes of the impacts to 911 and launched an aggressive plan to improve its networks and practices in four key areas—*i.e.*, central office (CO) power, network monitoring, 911 network redundancy and diversity, and the condition of its COs—throughout its service area. Verizon also instituted further improvements in its communications with PSAPs”).

<sup>6</sup> Less than a week after the derecho struck, the VSCC issued an Order Establishing Investigation directing its Staff to investigate the loss of 9-1-1 emergency call services from the derecho, to prepare a report containing preliminary findings by September 14, 2012, and to file a report with final findings and recommendations by December 31, 2012.

its comments, suggests that industry-wide remedies are not necessary. First, the VSCC highlights that Verizon's inability to provide reliable 9-1-1 service during and after the derecho resulted primarily from the company's failure to follow its own back-up power protocols.<sup>7</sup> Any alleged problems with circuit auditing, diversity monitoring, and PSAP notification did not prevent Verizon from serving its 9-1-1 customers. Second, the VSCC took corrective actions with Verizon that were specific to the company.<sup>8</sup> VSCC did not find it necessary to adopt broad rules applicable to all providers in Virginia. Third, the VSCC concluded that "Verizon had made significant progress in implementing numerous corrective actions initiated shortly after the June 29 derecho" on its own initiative.<sup>9</sup>

Like the VSCC, the PSAP Directors from the National Capital Region (NCR) also met, just weeks after the storm, for an after-action analysis of Verizon's network failures caused by the derecho. Nearly a year later, the NCR PSAP Directors "continue to meet together and with Verizon and other Subject Matter Experts to develop long and short term solutions to ensure that these Verizon system failures do not reoccur."<sup>10</sup> The ongoing discussions with Verizon "have produced some 9-1-1 system reconfiguration recommendations, as well as identification of the

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<sup>7</sup> Specifically, the VSCC emphasized that the 9-1-1 service outages in "Northern Virginia should not have occurred and w[ere] avoidable if Verizon had been properly and routinely testing and maintaining the generators in the Arlington and Fairfax offices." VSCC Comments at 3.

<sup>8</sup> The VSCC adopted a number of ongoing monitoring tools to verify Verizon's compliance with the requirements set forth in that order. *See* VSCC Comments at 5.

<sup>9</sup> VSCC Comments at 3. The VSCC was "particularly encouraged by Verizon's initiative to conduct power audits in central offices beyond those impacted directly by the ... derecho." *Id.*

<sup>10</sup> City of Alexandria Comments at 3.

need for certain site upgrades, dissemination of alert notices to PSAPs by Verizon and [the] provision of additional communications system redundancy.”<sup>11</sup>

The extensive investigation of the discrete network failures of particular providers have not produced a record basis for industry-wide rules, but rather compliance plan requirements for the particular providers in question. The Commission and state and local authorities are to be commended for having identified the root causes of the network failures that occurred, specifying remedial measures, and securing Verizon’s commitment to make the necessary changes. But these provider-specific remedies were designed to address provider-specific problems. In the absence of a finding of industry-wide failures, there is no record basis for imposing these remedies on the industry as a whole, and to do so would be arbitrary and capricious. Commission action to impose prescriptive regulation in the face of a record demonstrating the success of voluntary best practices runs the risk of reducing 9-1-1 reliability by depriving providers of the flexibility needed to tailor network reliability practices to their unique networks and the physical environments in which they are deployed.

**III. THE RECORD REFLECTS THE EFFECTIVENESS OF VOLUNTARY BEST PRACTICES, WHILE CALLS FOR PRESCRIPTIVE REGULATION LACK FACTUAL SUPPORT.**

The record demonstrates that most providers’ networks performed well during the derecho event and will perform well during future emergency events.<sup>12</sup> AT&T and other commenters attribute this success to the commitment of the FCC and the communications industry to developing and implementing reliability best practices that accommodate the individual circumstances of providers, including differences in their networks and the physical

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<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> *See* AT&T Comments at 10; USTelecom Comments at 3; *see also* ACS Comments at 3; WTA Comments at ii.

environments in which they are deployed.<sup>13</sup> Despite this success, the *Notice* asks if the Commission should adopt new rules regarding 9-1-1 circuit auditing, central office backup power, network monitoring, and PSAP notification. Opening comments submitted by AT&T and several other commenters demonstrate that 9-1-1 Service Providers already regularly enhance and refine the industry’s voluntary 9-1-1 best practices, including to reflect the “lessons learned” from particular disaster events. Moreover, successful delivery of 9-1-1 service requires the effective collaboration of both service providers and PSAPs. In fact, in certain circumstances, the “level of reliability and resiliency of 9-1-1 services is outside the control of the network provider altogether.”<sup>14</sup>

In contrast, proponents of new, prescriptive regulation fail to provide the necessary record support to justify a change in Commission policy from successful reliance on voluntary best practices in the area of 9-1-1 reliability to imposition of prescriptive regulation. Nor do proponents of prescriptive regulation demonstrate how such an approach would increase 9-1-1 reliability. Rather, these commenters simply advocate a “more is better” approach to regulation

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<sup>13</sup> See, e.g., AT&T Comments at 10; USTelecom Comments at 5 (“USTelecom supports enhanced public-private partnership efforts in lieu of new regulations on 9-1-1 network resiliency and reliability. Communications sector reliability overall has a long history of success through NRIC, CSRIC, ATIS, and the NSTAC.”); TIA Comments at 8 (“Given the abundance of best practice work today, TIA strongly urges the Commission to allow for these successful efforts to continue to evolve and succeed, and to refrain from adopting new unnecessary regulations on network reliability.”); ATIS Comments at 6 (“Unlike regulatory mandates, which generally impose rigid rules based an evaluation of circumstances at a specific point in time, Best Practices provide guidance based on industry expertise and experience and continually evolve to meet new technical, business, and consumer expectations. The success of Best Practices stems from their development in a voluntary and consensus-based environment in which industry experts collaborate and constantly update existing and/or develop new Best Practices to account for current technology and network growth.”).

<sup>14</sup> ACS Comments at 4. Often, the level of redundancy and service resiliency tie directly to funding decisions made by PSAPs and their associated local governmental budgeting process. At the end of the day, the “network provider can only deliver the services that the PSAP orders and for which it is willing to pay.” ACS Comments at 5.

that ignores best practices already in place and glosses over the differences in provider networks and the markets in which they are deployed.

On balance, the record supports the FCC maintaining its present policy of active support of, and participation in, the development and refinement of industry best practices for 9-1-1 reliability rather than adopting new rules. Likewise, the Commission should reject calls to codify voluntary best practices into law. Codifying best practices would remove their inherent flexibility and preclude 9-1-1 Service Providers from tailoring best practices to their individual circumstances.<sup>15</sup> Further, codifying best practices would chill provider participation in the evolution of best practices as providers would fear that any proposed practice refinement could be hardened into a legal obligation.

**A. The Record Does Not Support Adoption of Prescriptive 9-1-1 Circuit Auditing Rules.**

The record reflects that AT&T and other 9-1-1 Service Providers already follow auditing best practices that produce highly accurate results and ensure 9-1-1 network redundancy and survivability.<sup>16</sup> Indeed, AT&T supports a requirement that 9-1-1 Service Providers certify annually that they conduct computerized audits consistent with industry best practices.<sup>17</sup> Such

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<sup>15</sup> See, e.g., ATIS Comments at 6 (“Best Practices are created by the industry with the specific understanding that they will not be mandated as requirements. Mandating Best Practices would eliminate the flexibility necessary for service providers to meet network-specific demands and customer expectations, including service features and quality, reliability, and cost effectiveness.”); ACS Comments at 7-8; Verizon Comments at 17.

<sup>16</sup> AT&T, for example, uses its Diversity Analysis Reporting Tool to monitor physical and logical diversity across all AT&T entities and for all critical 9-1-1 circuits and ALI/ANI links. See AT&T Comments at 11-12; Frontier Comments at 8-9; ATIS Comments at 10.

<sup>17</sup> Such a requirement should be modeled after the CPNI certification process: (1) a company director would execute a compliance certificate on an annual basis; (2) the signatory would certify personal knowledge that the company maintains auditing procedures that adequately test for physical and logical diversity; and (3) the certification would be supported by a written statement explaining how the company conducts its diversity audits.

certification would be an appropriate incremental step to reassure the public that providers are adhering to Best Practices to bolster network reliability and resiliency.<sup>18</sup> The Commission should not, however, transform the certification into a *de facto* reporting obligation as Verizon proposes.<sup>19</sup> While such reporting may be an appropriate compliance plan commitment to address network failures that occurred during the derecho, and Verizon apparently acquiesces to this approach, the record does not support imposing industry-wide reporting.

The record also does not support the *Notice's* proposal to require that 9-1-1 Service Providers physically audit their 9-1-1 networks. As AT&T explained in its comments, physical auditing—unlike computerized auditing—is resource-consumptive and time-consuming, and exposes physical plant to the potential for damage as equipment is exposed and manipulated.<sup>20</sup> Nor does the record support any of the Commission's other auditing proposals relating to reporting, reliability requirements, and inspections: requirements which are unnecessary and

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<sup>18</sup> See AT&T Comments at 14.

<sup>19</sup> In addition to the actual certification, Verizon proposes that providers file reports describing how they are complying with each of the developed best practices. If the provider is not complying with a particular practice, the provider could explain in the report why not and, if applicable, describe the actions it is taking that would mitigate the relevant risk the practice is intended to address. Verizon Comments at 13-14.

<sup>20</sup> As explained in AT&T's comments, to physically audit a network element, including a 9-1-1 circuit, a technician must review engineering records (such as schematics and CAD diagrams) and trace the physical path of a discrete 9-1-1 circuit through AT&T's deployed plant. This verification must occur at all points of a circuit: (1) from AT&T's local service offices through street conduits to the street address of the PSAP; (2) within the local service offices; and (3) in interoffice transport, including street conduits and intermediate central offices all the way back to the end offices where the emergency services trunks originate. These concerns are not hypothetical. AT&T and other providers have first-hand experience that drives their conclusion that conducting physical audits on a network-wide basis is a practical impossibility from a time and resource perspective, and such investments would be misallocated in light of the limited expected benefits of such audits. See AT&T Comments at 12-13; Frontier Comments at 9 (opposing an annual auditing requirement because "it would take nine full time employees to complete this audit on an annual basis assuming the employees had no other responsibilities other than to audit circuits").

would add significant expense without attendant benefits. Indeed, supporters of these proposals fail to provide any evidence of a need for such rules, or a factual record demonstrating their superiority to voluntary best practices already in place.<sup>21</sup> Instead, proponents of prescriptive regulation seem to rely on the fact that the Commission has proposed such rules as evidence of their worth.

**B. The Record Reflects That a Flexible Approach to Central Office Backup Power Best Serves the Public Interest.**

The opening comments of AT&T and others demonstrate that leaving backup power decisions—including testing and maintenance—in the hands of providers has enabled providers to develop nimble, highly-reliable back-up power strategies based on individualized assessments of the local needs and characteristics of a given central office.<sup>22</sup> By contrast, proponents of prescriptive regulation fail to develop a record justifying a change in Commission policy from reliance on best practices with regard to central office backup power to a rule-driven approach.<sup>23</sup>

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<sup>21</sup> See, e.g., Fairfax County Comments at 3-5; NENA Comments at 10; Pennsylvania Public Utilities Commission (“PUC”) Comments at 13-14; City of Alexandria Comments at 6.

<sup>22</sup> AT&T, for example, maintains fixed generators in 88 percent of its central offices, backup batteries at all central offices, and a fleet of portable generators that can be mobilized on a moment’s notice. AT&T Comments at 13-19; see also Frontier Comments at 13 (“Frontier’s backup power plans performed reasonably well and Frontier feels that no further requirements are necessary at this time to ensure compliance of its now fully-tested system.”); ACS Comments at 10-11 (“Reliable commercial power is unavailable in many areas of Alaska that ACS serves, and ACS therefore maintains significant backup power capabilities, both in Anchorage and throughout the state. ACS maintains generators at critical locations throughout the state, as well as its own, on-site fueling station that it can use to supply and resupply the necessary fuel to keep these generators operating. In addition, many ACS central offices have battery backup facilities that offer an additional source of emergency power, should it be needed.”); TIA Comments at 10 (“It should be noted that most critical facilities, including data centers, already have backup power without a Commission requirement.”); ATIS Comments at 11.

<sup>23</sup> See, e.g., Fairfax County Comments at 5-7; NENA Comments at 12; California Public Utilities Commission Comments at 9; Pennsylvania PUC Comments at 14; NATOA Comments at 4-6; City of Alexandria Comments at 7.

Nor do they allay legitimate concerns that requiring 9-1-1 Service Providers to provide on-site backup power in every central office would eliminate the flexibility that providers need to maintain their networks and provide backup power in the most efficient possible manner. Supporters of the proposed rules also fail to address concerns that the new backup power requirements may divert service provider resources away from other projects that will better serve customers during disasters and normal operations.<sup>24</sup> Absent such factual showings, the Commission lacks a record basis for adopting the new back-up power requirements proposed in the *Notice*.

**C. Proponents of Prescriptive Regulation Fail to Provide Record Support For Industry-Wide Network Monitoring Rules.**

The record supports AT&T's position that, given the proven reliability of providers' backup power strategies and their existing monitoring mechanisms, prescriptive regulation of network monitoring is unnecessary.<sup>25</sup> As AT&T and others detailed in their comments, service providers require the flexibility to rapidly evolve and harden their network monitoring techniques as informed by experience in the field and permitted by advances in technology. Indeed, with this flexibility, providers have been able to make informed decisions that improve diverse monitoring. AT&T, for example, recently took several steps to decrease still further the

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<sup>24</sup> As AT&T explained in its comments, the Commission's estimate that its proposed backup power requirements would cost upwards of \$37.5 million—which already reflects a significant expenditure of resources with little attendant benefit—fails to account for the full panoply of costs involved in purchasing, installing, and maintaining permanent generators and fuel tanks.

<sup>25</sup> See, e.g., AT&T Comments at 19-20; ATIS Comments at 11 (Providers should “retain the flexibility to implement diversity and the migration of telemetry to the IP network as appropriate for their network evolution, management, and monitoring.”).

potential for a network monitoring failure, even during emergencies.<sup>26</sup> Importantly, AT&T was able to take these steps because to date the Commission has abstained from imposing one-size-fits-all monitoring requirements.

Conversely, proponents of prescriptive regulation fail to develop a factual record that would justify a Commission decision to abandon its successful reliance on market forces to drive optimal network monitoring investments in favor of industry-wide, prescriptive regulation.<sup>27</sup> Nor did these proponents demonstrate how new monitoring requirements would increase 9-1-1 reliability or how such requirements would enable providers to continue to account for the differences in their networks and markets. Further, neither the Commission, nor supporters of new diverse monitoring requirements, have acknowledged that in many areas of the country, physical route diversity—and hence diverse monitoring—may be impossible because there may be only a single facility or route serving a PSAP location. Indeed, route diversity—and diverse monitoring—“may be purely in the control of PSAPs, and the costs of service they are willing to incur.”<sup>28</sup>

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<sup>26</sup> First, the company implemented a procedure of sending failure event notices to multiple Network Operations Centers (“NOCs”), which has increased the visibility of network failures throughout AT&T’s network and expedited the corrective response. Second, AT&T updated its monitoring protocols to review correlation data from multiple monitoring sources to evaluate the status of a switch when direct communications links fail. Third, AT&T implemented a long-term plan to move all monitoring links to an IP routed network.

<sup>27</sup> *See, e.g.*, Fairfax County Comments at 7 (“The Commission should require that network monitoring capabilities avoid or eliminate single points of failure and be supplied with adequate diverse backup power systems that are not reliant on the same backup power resources that are committed to the operation of the central office equipment.”); Pennsylvania PUC Comments at 15-16; NATOA Comments at 7-8; City of Alexandria Comments at 7.

<sup>28</sup> *See* ACS Comments at 4-5 (“The decisions and funding commitments necessary to achieve this level of redundancy and service resiliency are wholly within the province of the PSAP and its associated local Alaska Communications Systems governmental budgeting process”).

**D. The Record Supports Enforcing Existing Part 4 PSAP Notification Rules Rather than Adopting New Requirements.**

No commenter asserts that a 9-1-1 Service Provider complied with the Part 4 rules and still failed to provide a PSAP with information necessary to address a network outage.

Accordingly, the issue before the Commission is one of enforcement of existing rules rather than adoption of new ones. The Commission’s Part 4 rules require PSAP notification of Network Outage Reporting System (“NORS”) reportable outages. Consistent with these rules, AT&T and other 9-1-1 Service Providers communicate to PSAPs the information required under Part 4 as well as much of the new information the *Notice* proposes to require.<sup>29</sup> To the extent a PSAP asserts that it was not notified of outages or received inadequate information about the scope of impacts to 9-1-1 service from the derecho or any other event,<sup>30</sup> the appropriate Commission response is enforcement of the existing Part 4 rules.<sup>31</sup>

Proponents of adopting additional Part 4 reporting rules fail to provide any evidence that the existing Part 4 rules are inadequate.<sup>32</sup> Indeed, they do not even show that the existing rules have been violated. Accepting as true the small number of allegations of PSAPs contacting a 9-

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<sup>29</sup> See AT&T Comments at 24; ATIS Comments at 12.

<sup>30</sup> Despite the clear requirements of the Part 4 rules—and the statements by providers that suggest a high rate of compliance—the Commission states that after the derecho “many PSAPS reported that they were not notified of outages or received inadequate information about the scope of impacts to 9-1-1 service.” *Notice* at ¶ 68.

<sup>31</sup> *Id.* at ¶ 68.

<sup>32</sup> See, e.g., Fairfax County Comments at 8-10; NENA Comments at 13; APCO Comments at 3-4; Pennsylvania PUC Comments at 17; NATOA Comments at 8; City of Alexandria Comments at 7. The Part 4 rules already require that providers notify PSAPs as soon as possible regarding any outage potentially affecting a 9-1-1 special facility and convey to the PSAP “all information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility.” If a provider or providers has failed to comply with the Part 4 rules with respect to a particular PSAP, the Commission should open an investigation rather than adopt new rules for the entire industry.

1-1 Service Provider regarding an outage before being contacted by the provider, that fact alone is insufficient to establish a rule violation.<sup>33</sup> The record is devoid of a specifically pled violation of Part 4, much less evidence that where providers comply with Part 4 the information supplied to PSAPs is insufficient to meet their needs. The Commission requires a factual predicate for the imposition of new rules. Accordingly, the Commission should reject calls for new PSAP notification rules on the basis of unsupported anecdotes.

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<sup>33</sup> During the Bureau's *derecho* inquiry, Prince William County, the City of Manassas, and Manassas Park alleged that their PSAPs contacted Verizon to report a loss of service before being contacted by the provider. *See Derecho Report* at 30-31. Additionally, a "majority of PSAPs" in West Virginia allegedly "made the initial call to Frontier to report their outages before Frontier initiated contact with the PSAP." *Derecho Report* at 34. Without more information, these allegations do not establish a rule violation or show that the purpose of the rules was not served. While the general purpose of the rule is that covered providers notify PSAPs quickly of an outage, there are occasions where a PSAP will become aware of an outage before the provider does. Under those circumstances, the rule cannot guarantee that the provider will contact the PSAP first. 47 C.F.R. § 4.9(f).

#### IV. CONCLUSION

The record gathered in this proceeding reflects that most 9-1-1 Service Providers performed well during the derecho despite the severity of the storm and that this success resulted from the widespread adherence by 9-1-1 Service Providers to voluntary industry best practices. The record also reflects that in those discrete instances where particular providers did not perform well, the Commission, as well as state and local officials, has investigated and addressed any issues on a provider-specific basis. Although the *Notice* afforded commenters favoring prescriptive regulation an opportunity to develop a factual record on why the Commission should abandon its successful reliance on dynamic best practices in favor of prescriptive regulations, and to demonstrate how new regulations will increase 9-1-1 reliability, regulation proponents have failed on both counts. Accordingly, there is no record basis for the Commission to disrupt the effective best practices process by now embarking on a prescriptive regulatory approach.

Respectfully submitted,

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